

ORIGINAL

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

EX PARTE OR LATE FILED

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE (202) 955-9788

E-MAIL: tdaubert@kelleydrye.com

NEW YORK, NY

LOS ANGELES, CA

CHICAGO, IL

STAMFORD, CT

PARSIPPANY, NJ

BRUSSELS, BELGIUM

HONG KONG

AFFILIATE OFFICES

BANGKOK, THAILAND

JAKARTA, INDONESIA

MANILA, THE PHILIPPINES

MUMBAI, INDIA

September 7, 2000

RECEIVED

SEP 7 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-204B
Washington, DC 20554

Re: **Notice of *Ex Parte* Presentation by Edge Connections, Inc.**
WT Docket No. 99-217; CC Docket No. 96-98

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's Rules, Edge Connections, Inc. ("Edge"), by its attorneys, submits this notice in the above-referenced proceeding of an oral *ex parte* presentation made, and written *ex parte* materials distributed, during a meeting on September 6, 2000 with Joel D. Taubenblatt and Lauren Van Wazer of the Wireless Telecommunications Bureau. Jim McKenna, CEO and founder of Edge, Robert J. Aamoth, Kelley Drye and Warren, and Todd D. Daubert, Kelley Drye and Warren, made the presentation.

During the presentation, Edge recounted its experiences in negotiating building access, and explained that many owners of Multi-Tenant Environments ("MTEs"), particularly those who have an equity interest in a telecommunications service provider, refuse to reasonably negotiate building access with Edge despite tenant demand and proof that numerous tenants have already signed service contracts with Edge. Due to the refusal by these MTE owners to negotiate building access with Edge, Edge has not been able to provide service to a number of tenants in these MTEs who have signed service contracts with Edge. After waiting patiently to receive service for over 5 months, 32 customers have cancelled their contracts with Edge. Another 56 customers have waited for over 90 days to receive service, and may cancel their contracts unless the MTE owner grants access to Edge in the near future. These statistics demonstrate that certain

Ms. Magalie R. Salas
September 7, 2000
Page Two

MTE owners are interfering with their tenants' ability to choose a telecommunications service provider.

Edge explained that there is no apparent basis for these MTE owners to refuse to negotiate building access, apart from their own equity ownership in a different service provider. In Edge's experience, there has been more than ample space in these MTEs to install Edge's equipment. The only equipment that Edge needs to install in an MTE is a VCR-sized DSLAM that can be installed on a 3' x 3' wall space in or near the telephone closet. For illustrative purposes, Edge brought one of its DSLAMs to the meeting. The DSLAM can be installed in less than two hours, and Edge does not need to replace or alter any of the riser cables in the MTE or perform any other modifications to the MTE itself. Thus, the installation procedures do not cause any material disruptions or tenant inconvenience. Despite Edge's diligent attempts to address every possible concern that an MTE owner could have about entering into a building access agreement with Edge, some MTE owners have refused to allow Edge to serve their tenants. We have attached a redacted letter from Edge to an MTE owner that illustrates the lengths to which Edge has gone to secure building access. We have also attached an article from the September 1-7, 2000 edition of the Atlanta Business Chronicle which illustrates that some building owners believe that discriminatory access policies are acceptable.

Several MTE owners have independently informed Edge that they would not grant Edge access to their MTEs due to their equity interest in BroadBand Office ("BBO"). In fact, those MTE owners have indicated that the BroadBand Office License Agreement precludes them from granting access to Edge. After hearing from several different MTE owners about a 12-month "Blackout" period during which BBO partners must restrict access to competitive telecommunications providers, Edge received the document that it filed with the Commission on September 1, 2000. This document discusses restrictive provisions in the BroadBand Office License Agreement, including the 12-month "Blackout" period, and provides guidance to a BBO partner's employees on how to address requests by competitive telecommunications providers for building access. As Edge explained during the meetings, the license provisions and negotiation procedures described in the document are consistent with Edge's experience in the Atlanta market. In fact, some MTE owners have told their tenants not to enter into service agreements with Edge. We have attached a memo from one of the largest MTE owners in the nation to its tenants in which the tenants are discouraged from entering into service agreements with Edge, because Edge, as an "unapproved vendor," would not be able to honor them. Initially, Edge sought to address these issues directly with BBO counsel and the MTE owners themselves. Nevertheless, Edge has yet to receive access to any of these MTEs.

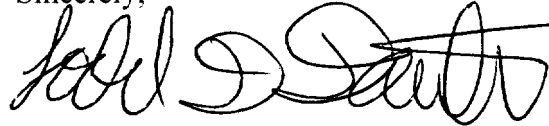
Edge believes that its experiences demonstrate the urgent need for regulation to promote non-discriminatory building access, and that reliance on market forces alone will be insufficient to ensure non-discriminatory building access, particularly where real estate entities own equity in telecommunications and information service providers. Unenforceable commitments and assurances are insufficient to correct the incentives that MTE owners who are

Ms. Magalie R. Salas
September 7, 2000
Page Three

affiliated with service providers have to exclude all other service providers. License provisions like those described in the document that Edge filed with the Commission on September 1, 2000 are merely textual manifestations of the incentive structure created by the equity affiliation. These provisions also clarify the message to MTE owners that the affiliated service provider will be more successful if protected from competition. Regulation is urgently needed to counteract these incentives and to prevent the type of discriminatory behavior that Edge has experienced.

Pursuant to Sections 1.1206(b)(1) and (2), an original and two copies of this *ex parte* notification (with attachments) are provided for inclusion in the public record of the above referenced proceeding. We would be pleased to provide additional copies of the written materials upon request. Please direct any questions regarding this matter to the undersigned.

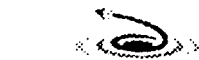
Sincerely,

A handwritten signature in black ink, appearing to read 'Robert J. Aamoth', with a long horizontal line extending to the right.

Robert J. Aamoth
Todd D. Daubert
Counsel to Edge Connections, Inc.

Enclosures

cc:	Clint Odom	Mark Schneider	Helgi Walker
	Peter Tenhula	Adam Krinsky	Kathy Brown
	Thomas Sugrue (WTB)	Jim Schlichting (WTB)	Jeffrey Steinberg (WTB)
	Joel D. Taubenblatt (WTB)	Lauren Van Wazer (WTB)	Leon Jackler (WTB)
	Eloise Gore (CSB)	Cheryl King (CSB)	Wilbert Nixon (WTB)
	Paul Noone (WTB)	Mark Rubin (WTB)	David Furth (WTB)
	Richard Arsenault (WTB)		



Edge connections

1100 Johnson Ferry Road • Suite 400 • Atlanta, Georgia 30342 • 404.459.0468 main • 404.459.9417 fax

August 16, 2000

[REDACTED]

Dear [REDACTED]

I wanted to take a moment to follow up with you regarding Edge Connections and our proposed service offerings for [REDACTED]. Since it has been nearly two weeks since I have last heard from you, I wanted to provide a brief update on our "stranded customers" in [REDACTED] buildings and seek your advice on bringing the current situation to resolution. We are committed to reaching an arrangement which we believe will be mutually beneficial for [REDACTED] its tenants, and Edge Connections.

Currently, we have 17 stranded customers in several [REDACTED] buildings that have placed orders for service with Edge Connections. Our order aging report shows that 16 of these orders are beyond the customers' expected due dates due to the inability to reach any agreement with [REDACTED]. There are several additional tenants who have also expressed an interest in ordering services, but we are currently reluctant to accept these orders given the uncertainty of the current bargaining climate.

Edge Connections has steadfastly attempted to address every single concern that has arisen during our discussions to date. We've successfully demonstrated tenant demand for Edge Connections products and services, we've not only contacted, but had detailed conversations with the [REDACTED] headquarters [REDACTED] we've discussed this issue with [REDACTED] we've successfully addressed the Broadband Office moratorium issue [REDACTED] we've determined that physical space is not an issue, we've prepared and delivered a formal proposal to [REDACTED] we've offered a fair and reasonable License Fee agreement that would allow revenue sharing for [REDACTED] and we've successfully held anxious customers at bay without making [REDACTED] appear to be at fault.

[REDACTED] I would welcome any suggestions you may have that would assist us in bringing this to successful resolution. To date we have shown a willingness to be creative and work as a partner, a partner that truly offers value to your tenants. What else can we do?

Thank you again for your consideration. I look forward to speaking with you at your earliest convenience

Very truly yours,

Rob Whittemore

Director of Real Estate
Edge Connections, Inc.

Telecom providers want roof access

By Jan R. Costello
CONTRIBUTING WRITER

A high-tech version of king of the mountain is taking place on the roofs of the nation's office buildings.

The upstart telecommunications providers who compete with the BellSouths of the world want access to office buildings. They need to get on the roofs to place their antennae and other equipment, and they need to get inside to run their wires. They've asked the government to make office building owners let them in.

"I think it's terrible," said Alex Chambers, vice president of the Cousins Properties Inc. office division. "I don't



Turetsky

see why we would have to give access to anybody that we didn't want to have on our property."

Telecommunications providers say they just want what the local carriers have been given free for years — access to the buildings — and they're willing to pay for it. Teligent Inc. (NASDAQ: TGNT), a 3-year-old fixed wireless company that operates in Atlanta and 41 other cities, has worked out lease arrangements with many building owners, but the process often takes 18 months and some landlords refuse to negotiate at all.

"Some tenants are being denied choice today because landlords won't allow carriers into the building," said David Turetsky, senior vice president of Teligent. "This results in services that

aren't as good and as cheap as they could be."

Teligent offers broadband and voice services. The company wires the building to an antenna on the roof, where the signal is beamed to one of its hubs. The company needs an unobstructed path between the antenna and hub. The hubs are connected by fiber or microwave radio to the core of its network and the rest of the wired

world.

Teligent and Winstar Communications Inc. (NASDAQ: WCII) are two of the chief proponents for new rules eliminating barriers to competition. Winstar

► See ACCESS, Page 33C



Chambers

ATLANTA BUSINESS CHRONICLE
SEP 1-7, 2000

Access

Continued from Page 2C

provides service in Atlanta and 30 other cities.

These companies, 20 other competitive local exchange carriers, cable service providers, various telecommunications associations and companies offering wireless telephone services formed The Smart Buildings Policy Project to convince the Federal Communications Commission to pull down what they call the last obstacle to telephone competition. They want the FCC to apply the Telecommunications Act of 1996 to the last few yards of the communication network; the act is supposed to remove barriers to local telephone competition. The measure could be voted on this fall.

The FCC is considering requiring office-building owners to provide reasonable and nondiscriminatory access to rooftops, wiring conduits and phone circuitry closets inside multitenant buildings. The rule also would allow access to the rights of way and riser conduits owned or controlled by utilities in multitenant buildings. In both cases, the rule stipulates that the building owners or utilities could be compensated, but must set just, reasonable, and nondiscriminatory rates, terms and conditions. Texas and Connecticut already have adopted such rules, but they have not been enforced yet. California is considering a measure.

In Congress, Rep. Michael G. Oxley (R-Ohio) introduced a bill last November that would force building owners to provide access in exchange for some compensation.

The Building Owners and Managers Association (BOMA) is dead set against such rules.

"Mandatory access is unneces-

"There are lots of reasons why we might not want them on the roof. We might think it's ugly. We might have another tenant who wants the space for storage or an air-conditioning unit. We might just think they're jerks."

Alex Chambers
Cousins Properties Inc.

managers. "The competitive marketplace is working just fine."

In a BOMA survey of 10,000 tenants, in which 642 responded, 98 percent said they were receiving telecom services from the carrier of their choice.

Chambers said Cousins Properties tenants have choices. The company has

more than 100 agreements with competitive local exchange carriers across the country, and he gets several calls a week from telecom providers who want to strike-up deals.

"We look at it as a business opportunity, and we're not complaining," Chambers said. "But we don't want to be forced to do business with

someone we don't want on the roof or in the building."

Cousins manages more than 11 million square feet of office space across the country. From a telecommunications vantage point, one of its most coveted properties is the Bank of America Plaza, already a thicket of satellite dishes, cellular and paging equipment, and antennae, because it is the tallest roof downtown.

"There are lots of reasons why we might not want them on the roof," Chambers said. "We might think it's ugly. We might have another tenant who wants the space for storage or an air-conditioning unit. We might just think they're jerks. Why should our business have to suffer because they want to do their business?"

Telecom industry analyst Jeffrey Kagan hopes the issue is resolved soon.

"Telecommunications services are the lifeblood of business," he said. "Cus-



"Why should our business have to suffer because they want to do their business?"

Alex Chambers
Cousins Properties Inc.


tomers should be able to have a choice. It's not going to harm the building. It will only enhance building owners' relationships with tenants and make



Memorandum

To:  Tenants
From: 
Subject: Telecommunications/Edge Connections
Copy: File

Date: July 17, 2000

Edge Connections has been soliciting agreements within  This company is not an approved provider and has not been authorized to install equipment within our buildings. Please do not enter into any agreements with this vendor as they cannot be honored.

If you have any questions regarding this, please do not hesitate to call me at (404)



CERTIFICATE OF SERVICE

I, Gledys Y. Lovato, hereby certify that, this 7th day of September 2000, I caused a copy of the foregoing "Ex Parte" to be served via hand delivery to the following:

William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W., 8B201
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8B115
Washington, D.C. 20554

Harold W. Furchtgott-Roth, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8A302
Washington, D.C. 20554

Michael K. Powell, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8A204C
Washington, D.C. 20554

Gloria Tristani, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8C302
Washington, D.C. 20554

Kathryn Brown, Chief of Staff
Office of the Chairman
Federal Communications Commission
445 12th Street, S.W., 8B201
Washington, D.C. 20554

Clint Odom, Legal Advisor
Office of the Chairman
Federal Communications Commission
445 12th Street, S.W., 8B201
Washington, D.C. 20554

Mark Schneider, Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., 8B115
Washington, D.C. 20554

Helgi Walker, Sr Legal Advisor & Chief of Staff
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., 8A302
Washington, D.C. 20554

Peter Tenhula, Senior Legal Advisor
Office of Commissioner Michael Powell
Federal Communications Commission
445 12th Street, S.W., 8A204C
Washington, D.C. 20554

Adam Krinsky, Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W., 8C302
Washington, D.C. 20554

Thomas Sugrue, Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C252
Washington, D.C. 20554

Jim Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C254
Washington, D.C. 20554

Jeffrey Steinberg, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4C222
Washington, D.C. 20554

Joel D. Taubenblatt
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A260
Washington, D.C. 20554

Lauren Van Wazer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A223
Washington, D.C. 20554

Leon Jackler
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4B145
Washington, D.C. 20554

Eloise Gore
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W., 4A726
Washington, D.C. 20554

Cheryl King
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W., 4C738
Washington, D.C. 20554

Wilbert Nixon
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A265
Washington, D.C. 20554

Paul Noone
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A133
Washington, D.C. 20554

Mark Rubin, Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C300
Washington, D.C. 20554

David Furth, Senior Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C217
Washington, D.C. 20554

Richard Arsenault
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A267
Washington, D.C. 20554

And via first-class mail, postage prepaid, to:

Rachelle Chong
General Counsel and VP Government Affairs
Greg Zemanick
Real Estate and Public Policy Counsel
BroadBand Office
951 Mariner's Island Boulevard, Suite 700
San Mateo, CA 94404



Gledys Y. Lovato